

AN ORDINANCE OF THE CITY OF KEY WEST,
FLORIDA, AMENDING CHAPTER 18, ENTITLED
"BUSINESSES", DIVISION 3 ENTITLED "OPEN
CONTAINERS" BY AMENDING SECTION 18-87
TO CLARIFY PROHIBITIONS; PROVIDING FOR
SEVERABILITY; PROVIDING FOR REPEAL OF
INCONSISTENT PROVISIONS; PROVIDING FOR
AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West
finds that pedestrians who are under the influence of
alcoholic beverages often congregate on the sidewalk or the
street causing vehicular and pedestrian traffic congestion
and significant safety concerns; and

WHEREAS, the City Commission for the City of Key West
finds that there exists a significant risk of injury for
pedestrians who are under the influence of alcohol while
traversing the narrow, congested streets and sidewalks of
the City of Key West; and

WHEREAS, the City Commission for the City of Key West
finds that the proposed ordinance revisions would serve to
promote the safety and welfare of the citizens and visitors
of the City of Key West;

WHEREAS, it is the intent of the City Commission for the City of Key West to prohibit the consumption of alcoholic beverages while in public areas and not the mere possession of an alcoholic beverage without evidence of consumption in accordance with local rulings from Monroe County Judges in the cases of State of Florida v. Lauren LaFlair 94-1154-MO, and City of Key West v. David Walters 13-MO-1976; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 18-87 of the Code of Ordinances is hereby amended as follows*:

Sec. 18-87. Prohibition.

(a) It shall be unlawful for any person to drink from an open container of an alcoholic beverage and be under the influence of said beverage while upon a public or semipublic area open for vehicular or pedestrian travel, or

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Double Underlined and ~~strike through~~ for second reading)

a commercial establishment parking lot or property owned by or under lease to the city, except in those areas in which such consumption is permitted pursuant to the beverage law, other state statutes, state administrative rule, or city ordinance or resolution.

(b) All businesses that are licensed to sell or dispense alcoholic beverages shall post at each exit a sign with the following wording: "It is illegal to carry an open container of an alcoholic beverage on the sidewalks or streets of Key West. KW Ord. 18-87." The dimensions of each sign shall be at least two square feet.

(c) Prima facie evidence of a violation of this section ~~being under the influence of an alcoholic beverage~~ shall consist of: (1) direct evidence of consumption of an alcoholic beverage while on public or semi-public property or area(s); or (2) ~~credible~~ evidence demonstrating any indicia of consumption of an alcoholic beverage including but not limited to: bloodshot eyes, an unsteady gait, slurred speech, or an odor of an alcoholic beverage emanating from one's breath or person based on that officer's training and experience, while in or on public or

semi-public property or area(s), while and in possession of an open alcoholic beverage container.

(d) There shall be one verbal or written warning for any first time offender of this section provided that compliance is immediately achieved. Second or subsequent violations are subject to arrest pursuant to F.S. § 901.15.

(e) Proof that the beverage in question was contained in a container labeled as "beer," "ale," "malt liquor," "malt beverage," "wine," or "distilled spirits" or with other similar name; and which bears the manufacturer's insignia, name, or trademark shall serve as prima facie evidence that such beverage is an alcoholic beverage ~~as defined in this section and in accordance with F.S. § 562.47(2).~~ Further, proof that a container contains alcohol as defined in this section, that is not so clearly marked as described herein, shall be established by testimony that the contents or remnants therein is consistent with alcohol through the officer's training and experience including but not limited to: odor, texture, appearance and color in combination with the officer's observations of the

violator, including but not limited to: bloodshot eyes,
unsteady gait, slurred speech, odor of an alcoholic
beverage and affect consistent with alcohol consumption.

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage, and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting
held this 6 day of November, 2013.

Read and passed on final reading at a regular meeting
held this 19 day of November, 2013.

Authenticated by the presiding officer and Clerk of
the Commission on 20 day of November, 2013.

Filed with the Clerk November 20, 2013.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>Yes</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>


CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

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WWW.KEYWESTCITY.COM

EXECUTIVE SUMMARY

To: The Mayor and City Commissioners for the City of Key West
From: Ronald Ramsingh, Esq., Assistant City Attorney
Date: November 12, 2013
RE: Amendment of Sec. 26-62 Alcohol on Beach, Sec. 18-87 Open Containers, and Sec. 26-97 Alcohol in Parks *for second reading*.

Background:

This proposed amendment is a companion to the current open container ordinance revision that is also currently before the Commission. The 2 revisions for Alcohol in Parks and Alcohol on Beaches likewise contain the same definition of alcohol as well as the same methods of proving these cases. Therefore, for consistency, these 2 ordinances are likewise proposed to be so amended. For second reading, further language has been clarified or eliminated as duplicitous. Those new proposed changes are double stricken through and double underlined.

Options:

1. To pass the proposed ordinance revisions at second reading for Open Container, Alcohol in Parks and Alcohol on Beaches and Alcohol in Parks, thereby closing a perceived loophole in the definitions and proof by the Court, while and making it much clearer for enforcement purposes;
2. To defeat the proposed revision and the existing ordinance will continue to be enforced.

Recommendation: To pass the attached proposed ordinance revisions at second reading.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Ramsingh", is written over a horizontal line.

Ron Ramsingh, Esq.